

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2004-0012, State of New Hampshire v. Joseph Billcliff, the court on March 29, 2005, issued the following order:

Following a jury trial, the defendant, Joseph Billcliff, was convicted on charges of conspiracy to commit arson and accomplice to arson. On appeal he contends that the trial court erred when it denied his motion to dismiss the conspiracy indictments. We affirm.

In an appeal challenging the sufficiency of the evidence, the defendant carries the burden of proving that no rational trier of fact, viewing the evidence in the light most favorable to the State, could have found guilt beyond a reasonable doubt. State v. Small, 150 N.H. 457, 464 (2004). “A person is guilty of conspiracy if, with a purpose that a crime defined by statute be committed, he agrees with one or more persons to commit or cause the commission of such crime, and an overt act is committed by one of the conspiracy in furtherance of the conspiracy.” RSA 629:3, I (Supp. 2004).

The defendant argues that the State failed to establish that he joined the conspiracy before one of his two co-conspirators committed the overt act alleged in the indictment, that is, before his co-conspirator took gasoline from his father’s garage. We will assume, without deciding, that the State bore the burden of proving that the defendant joined the conspiracy before the overt act was committed.

The evidence includes testimony that the defendant admitted to a friend that it was his idea to set the victim’s car on fire, and that he talked to his two co-conspirators about it. Assuming, as we must, that the jury accepted the testimony that the defendant admitted that the car fire was his idea and that he discussed it with his co-conspirators, the jury could have reasonably inferred that the gasoline was obtained after that conversation – indeed, the record suggests no rational explanation for why the co-conspirator would have obtained the gasoline prior to learning from the defendant of his idea to set the victim’s car on fire. Furthermore, there was evidence that in one of his interviews with the police, the defendant admitted that on the day before the gasoline was obtained and the fire set, the defendant discussed with his two co-conspirators setting the victim’s car on fire.

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While there was contrary evidence presented at trial, including evidence of inconsistent statements by the defendant, the jury has substantial latitude in determining the credibility of witnesses. The jury may accept or reject testimony in whole or in part, and adopt one or the other of inconsistent statements by witnesses. State v. King, 151 N.H. 59, 64 (2004). Because the defendant has failed to prove that no rational trier of fact, viewing the evidence in the light most favorable to the State, could have found guilt beyond a reasonable doubt, we conclude that the trial court properly denied the defendant's motion to dismiss the conspiracy indictments .

Affirmed.

NADEAU, DALIANIS and DUGGAN, JJ., concurred.

**Eileen Fox
Clerk**

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